IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3954 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KARSHAN KANA & 1 - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR NEHAL R JOSHI for Petitioner(s) : 1 - 2.
MS KIRAN PANDEY A.G.P. for Respondent(s) : 1-3

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 24/04/2007

ORAL JUDGMENT

1. **RULE**. Ms. Kiran Pandey learned A.G.P., waives service of rule on behalf of the respondents. At the request of the learned advocates for the parties, the matter is taken up for final hearing today itself.

2. The petitioner has challenged the order of respondent no. 3 dated 4th January, 2002, rejecting his request to renew the lease for mining purpose, on the ground that the petitioner had not submitted any application for renewal.

3. The petitioner was granted lease which was to expire on 9th September, 1999. He, therefore, made an application dated 18th June, 1999 to respondent no. 3 praying for renewal of lease. However, respondent no. 3 by the aforesaid order rejected the application for renewal, on the ground that no application was received by his office.

3.1. Being aggrieved by the said order, the petitioner preferred appeal before respondent no. 1, being Appeal No. 58/2002. The said appeal has also been dismissed by order dated 27th January, 2003.

4. I have heard Mr. Nehal Joshi learned advocate for the petitioner and Ms. Kiran Pandey learned A.G.P., for the respondents. The sole submission of Mr. Joshi is that the petitioner had submitted an application dated 18th June, 1999 seeking renewal of the lease. However, the petitioner's lease is not renewed on the ground that no such application was received by respondent no. 3. He has drawn my attention to the order of the appellate

authority i.e. ,respondent no. 1 wherein it is clearly stated that on searching the whole record, the petitioner's application dated 18th June, 1999 was found, meaning thereby, the order of respondent no. 3 was passed on the ground which never existed. It shows total non-application of mind. In view of the same, the said order is required to be quashed. Ms. Pandey has however, submitted that, that is not the only reason for which the lease is not renewed and the other reasons are adequately reflected in the order of the appellate authority. But this submission cannot be accepted because the first order of rejection of renewal passed by respondent no. 3 is totally based on nonexistent ground and, therefore, the entire matter deserves reconsideration. Hence, the impugned orders are quashed and set aside. Respondent no. 3 is directed to consider the petitioner's application dated 18th June, 1999 for renewal of the lease on its merits and in the process, respondent no. 3 will be entitled to consider even the issue of delay.

5. With the aforesaid directions, the petition is allowed. Rule is made absolute with no order as to costs.

[Akshay H. Mehta, J.]

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